

## OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

### NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education (“Superintendent”), pursuant to the authority set forth in Sections 3(b)(8), (11), and (17) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(8), (11), and (17)) (2012 Repl.); the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*) (2012 Repl.); Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-202 *et seq.*) (2012 Repl.); and Mayor’s Order 2007-149, dated June 28, 2007, hereby gives notice of his intent to amend Section 2901 (Invoice Submission) of Chapter 29 (Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia) of Subtitle A (Office of the State Superintendent of Education (“OSSE”)) of Title 5 (Education) of the District of Columbia Municipal Regulations (“DCMR”), as well as Chapter 28 (Certificates of Approval for Nonpublic Special Education Schools and Programs Servicing Students with Disabilities Funded by the District of Columbia and Special Education Rates) of Subtitle A, Title 5, of the DCMR.

In accordance with District of Columbia Official Code § 38-2561.07 through § 38-2561.15 (2012 Repl.), OSSE administers a certificate of approval program governing nonpublic special education schools or programs and establishes the payment rates and invoice processing for tuition and related services provided by nonpublic schools or programs. No District of Columbia agency may fund the placement of a student in a nonpublic special education school or program that does not have a certificate of approval. The certificate of approval program requires OSSE to ensure that students with disabilities who are placed in a nonpublic educational setting receive a free and appropriate public education in compliance with all applicable laws and regulations, including without limitation the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, *et seq.* A school or program with a certificate of approval is subject to OSSE monitoring for compliance with all applicable laws and regulations and may lose its certificate of approval for failure to comply with applicable requirements.

This proposed rulemaking amends Section 2901 of Chapter 29 to limit OSSE’s acceptance of invoices for services to no more than three (3) months after the date of services unless a later acceptance date is specifically approved by OSSE. The current regulation limits acceptance of invoices to no more than six (6) months after the date of services.

The proposed amendment to Chapter 28 revises existing regulations. Revisions to these regulations include, among other things: (i) greater flexibility for OSSE to grant a certificate of approval based on the highly specialized needs of a particular child; (ii) clarification of requirements regarding the permissible use of restraint and seclusion, instructional alignment with the local educational agency (LEA) of enrollment, and the obligation to provide student assessments and attend meetings as required by the LEA; (iii) new requirements regarding the obligation to report and address student absences; (iv) changes to the reporting requirements on student discipline and other incidents; (v) modification of the process by which OSSE requires

correction of noncompliance and allowance of an evidentiary hearing on a decision by OSSE to deny, revoke, refuse to renew, or suspend a certificate of approval; (vi) amendment to include all services for which the District of Columbia may seek Medicaid reimbursement; and (vii) establishment of fees for the submission and renewal of a certificate of approval and other actions. The rules have been re-organized and re-numbered for greater clarity.

The Superintendent gives notice of his intent to take final rulemaking action to adopt the proposed rules in not less than sixty (60) days from the date of publication of this notice in the *D.C. Register*. This notice is being circulated throughout the District for a sixty (60) day period, including an opportunity to submit written comments and attend public hearings on these proposals. Two public hearings have been scheduled: for April 29, 2014, between 1:30 p.m. until 3:30 p.m.; and May 6, 2014, between 5:30 p.m. and 7:30 p.m. They will take place at OSSE's office on the 3<sup>rd</sup> Floor, 810 1st Street, NE, Washington, D.C. 20002, as detailed and under conditions set forth at the end of this Notice.

**Section 2901 (Invoice Submission) of Chapter 29 (Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia) of Title 5, Subtitle A (Office of the State Superintendent of Education) of the DCMR is amended to read as follows:**

2901.9           Invoices submitted more than three (3) months after the date the services were provided shall not be accepted unless specifically approved by and at the discretion of OSSE.

**Chapter 28 (Nonpublic Special Education Schools And Programs Serving Students With Disabilities Funded By The District Of Columbia And Special Education Rates) of Title 5, Subtitle A (Office of the State Superintendent of Education) of the DCMR is amended as follows:**

**CHAPTER 28           CERTIFICATES OF APPROVAL FOR NONPUBLIC SPECIAL  
EDUCATION SCHOOLS AND PROGRAMS SERVING  
STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT  
OF COLUMBIA AND SPECIAL EDUCATION RATES**

**2800           AUTHORITY AND PURPOSE**

2800.1           This chapter is promulgated pursuant to the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 through 38-2561.15) (2012 Repl.) ("Placement Act"); Mayor's Order 2007-149 (June 28, 2007); Sections 3(b) (8), (11), and (17) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b) (8), (11), and (17)) (2012 Repl.); and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 806; D.C. Official Code §§ 38-201 *et seq.*) (2012 Repl.).

2800.2 The Office of the State Superintendent of Education (OSSE) may issue a certificate of approval to a nonpublic special education school or program, including a residential treatment or psychiatric residential treatment facility (“PRTF”) operating an educational program, serving students with disabilities funded by the District of Columbia. The purpose of the certificate of approval process is to maintain oversight of nonpublic special education schools or programs to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.

## **2801 APPLICATION FOR A CERTIFICATE OF APPROVAL**

2801.1 Consistent with Section 3 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.03 (2012 Repl.)), unless the placement of a student has been ordered by a District of Columbia Court, federal court, or hearing officer pursuant to IDEA and after the required findings have been made, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

- (a) Allows the use of aversive intervention in its policy or practice; or
- (b) Has not received and maintained a Certificate of Approval in accordance with D.C. Official Code § 38-2561.03 (2012 Repl.) and the provisions of this chapter.

2801.2 Except as provided in Subsection 2801.1, a nonpublic special education school or program shall not accept a placement of a District of Columbia student with a disability whose education is funded by the District of Columbia government unless it first submits an application for, on a form approved by OSSE, and receives and maintains a certificate of approval in accordance with this chapter. An application is required for an initial certificate of approval and for renewal of an existing certificate of approval.

2801.3 A student with a disability may be placed at a nonpublic special education school or program without a certificate of approval if the placement is by order of a court of law or a due process hearing officer decision pursuant to 34 C.F.R. § 300.51.

2801.4 A nonpublic special education school or program without a certificate of approval that accepts a District of Columbia student placed in that school or program by order of a court of law or due process hearing officer decision pursuant to 34 C.F.R. § 300.513 must apply for a certificate of approval within ninety (90) calendar days after the date of accepting that student and must immediately comply, at a minimum, with Sections 2811 through 2828 and Section 2834 of this subtitle upon accepting the student, unless otherwise exempted by OSSE.

- 2801.5 OSSE shall not accept or consider incomplete applications. If a nonpublic special education school or program's initial application or application for renewal is incomplete, OSSE will notify the school of the nature of the deficiency. If the school does not complete its application within thirty (30) calendar days, the application will be deemed withdrawn.
- 2801.6 A nonpublic special education school or program may not apply for a certificate of approval if the school or program had a certificate of approval, previously issued by OSSE, revoked or denied less than three (3) years prior to the application.
- 2801.7 OSSE shall only accept a complete application from a nonpublic special education school or program that does not operate in the District of Columbia, only when there is a need, as determined by OSSE, of District of Columbia students for the program or services offered by the nonpublic school or program that could not be met by another nonpublic special education school or program with a certificate of approval.

## **2802 AWARD OF CERTIFICATE OF APPROVAL**

- 2802.1 In determining whether to grant or renew a certificate of approval, OSSE shall review the applicant's program for compliance with the requirements of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*); applicable District of Columbia regulations governing grades, promotions, graduation and student discipline; and the requirements of this chapter. OSSE shall also require the nonpublic special education school or program to ensure that it is in compliance with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132), Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683).
- 2802.2 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval unless it obtains and maintains documentation verifying compliance with all applicable fire, safety, building code, health, lead paint and sanitation requirements, and any other inspections that may be required by local or state authorities.
- 2802.3 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval if the school or program does not prohibit by policy and practice aversive interventions.
- 2802.4 OSSE shall conduct an on-site inspection and may, as appropriate, consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a certificate of approval.

2802.5 A nonpublic special education school or program shall operate in a manner consistent with the specifications of the certificate of approval. A certificate of approval cannot be extended, assigned, or transferred to additional operating sites of the nonpublic special education school or program or to the provision of services to students in age or grade ranges, or disability categories which are not included on the school's application and noted on the school's certificate of approval. A nonpublic special education school or program may request such changes to an existing certificate of approval through an amendment to its application as described in Title 5, Subtitle A, Section 2805 of the DCMR.

2802.6 A nonpublic special education school or program must submit an initial application for any new branch or campus not covered by the existing certificate of approval.

### **2803 PROVISIONAL CERTIFICATE OF APPROVAL**

2803.1 Upon review of an initial application, OSSE may, in its discretion, grant a provisional certificate of approval upon a showing that the nonpublic school or program complies with the requirements listed below. A provisional COA may be granted in other instances. OSSE shall indicate the time or times by which the school or program shall meet the remaining requirements of this chapter to establish full approval status.

- (a) The Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*);
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- (c) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132);
- (d) Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*);
- (e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683);
- (f) Applicable fire, safety, building code, health, lead paint and sanitation requirements;
- (g) Inspection requirements of local or state authorities;
- (h) The school or program does not employ aversive intervention by policy or practice;

- (i) The school or program does not employ chemical, mechanical, or prone restraint by policy or practice;
- (j) The school or program does not employ seclusion interventions lasting more than sixty (60) minutes by policy or practice;
- (k) The school or program documents all restraint or seclusion interventions consistent with Section 2822 of these regulations; and
- (l) Any other standards in this chapter as determined by OSSE.

2803.2 OSSE may revoke a provisional certificate of approval issued pursuant to Subsection 2803.1 if the school fails to maintain compliance with the provisions in Subsection 2803.1. In such case, the application shall be treated as an initial application and all standards and procedures of this chapter shall apply.

2803.3 OSSE may, in its discretion, grant a provisional certificate of approval to a nonpublic special education school or program that does not meet one or more of the standards of this chapter, but only in exceptional circumstances as determined by OSSE, based on the educational needs of a particular student or students. In such cases, OSSE shall only grant provisional approval upon a showing that the school or program complies with the following:

- (a) The Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*);
- (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- (c) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12132);
- (d) Title VI of the Civil Rights Act of 1964, as amended (45 U.S.C. § 2000d, *et seq.*);
- (e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683);
- (f) Applicable fire, safety, building code, health, lead paint and sanitation requirements;
- (g) Inspection requirements of local or state authorities;
- (h) The school or program does not employ aversive intervention by policy or practice; and

- (i) Any other standards in this chapter as determined by OSSE.

2803.4 A nonpublic special education school or program granted a provisional certificate of approval under Subsection 2803.3 of this section shall be allowed to maintain the certificate of approval only for as long as the school or program serves the student(s) with the exceptional circumstances. The school or program may not accept other students without prior approval by OSSE.

## **2804 VALIDITY OF CERTIFICATE OF APPROVAL**

2804.1 A certificate of approval is valid for up to three (3) years after the date of issuance. The expiration date shall be clearly indicated on the certificate.

2804.2 A certificate of approval shall be void if:

- (a) The nonpublic special education school or program ceases providing educational programs or files for bankruptcy or dissolution;
- (b) The certificate of approval has expired and the nonpublic school did not submit a complete application for renewal within the applicable timelines in Section 2807; or
- (c) The certificate of approval is revoked by OSSE.

## **2805 CHANGED CIRCUMSTANCES AND AMENDMENT TO THE CERTIFICATE OF APPROVAL**

2805.1 A nonpublic special education school or program shall notify OSSE in writing before a change in circumstances occurs. A change in circumstances includes, without limitation, a change of ownership or leadership, accreditation status, location, hours or days of operation, or educational and therapeutic services offered or other form of change in operation that is inconsistent with information or specifications submitted to OSSE.

No less than sixty (60) calendar days before the change in circumstances, the nonpublic school or program must:

- (a) Notify OSSE in writing; and
- (b) Submit to OSSE specific documentation to describe the change including but not limited to, additional information regarding the change in circumstances as may be requested by OSSE. If the change of circumstance affects IEP service delivery, transportation, or school operations, the nonpublic special education school or program shall submit a detailed proposed plan to ensure continued compliance with IDEA and District of Columbia regulations.

- 2805.2 The nonpublic special education school or program shall notify the LEA and OSSE of an unanticipated change of circumstances with a written report about such change of circumstances no later than fifteen (15) calendar days after the date of such change.
- 2805.3 A nonpublic special education school or program shall request an amendment to the certificate of approval for any of the following changed circumstances:
- (a) A change in ownership;
  - (b) A change in location; or
  - (c) A change in the provision of services.
- 2805.4 If, after reviewing the notice of change in circumstances and any related information or materials, OSSE determines that the school or program satisfies the requirements for obtaining a certificate of approval, OSSE shall approve the request for amendment and/or change in circumstance documentation or plans as described in Subsections 2805.1 (b) or 2805.3 of this section. Upon approval by OSSE, the nonpublic school or program shall provide ongoing status updates in the implementation of change in circumstance plans including but not limited to the following instances:
- (a) If the change in circumstance plan approved by OSSE subsequently changes;
  - (b) If the nonpublic school or program anticipates delays in submission of materials to OSSE as part of the change in circumstance plan;
  - (c) When the nonpublic school or program updates other stakeholders (*e.g.*, parents, LEAs, etc.) regarding the change in circumstance.
- 2805.5 After review and approval of change of circumstances documentation submitted by the nonpublic school or program, OSSE shall amend the certificate of approval or modify OSSE's records regarding the school or program's status to reflect the change in circumstances upon a showing that the nonpublic special education school or program complies with the standards of this chapter.

## **2806 EXPIRATION OF A CERTIFICATE OF APPROVAL**

- 2806.1 It is the responsibility of the nonpublic special education school or program to submit a timely application for renewal of its certificate of approval. The failure to submit a timely renewal application shall result in an automatic expiration of the certificate of approval as of the date of expiration on the certificate of



approval. Upon expiration, the school or program may not serve District of Columbia students.

## **2807 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL**

2807.1 A nonpublic special education school or program may have its certificate of approval renewed for up to three (3) years at a time. An application for renewal must be submitted by the nonpublic special education school or program not later than one hundred and eighty (180) calendar days prior to the expiration date of the current certificate of approval, using a standard renewal form which shall be published by OSSE.

2807.2 OSSE may decline to renew a certificate of approval for any reason pursuant to D.C. Official Code § 38-2561.11 (2012 Repl.) and this chapter.

## **2808 EXTENSION OF A CERTIFICATE OF APPROVAL**

2808.1 OSSE may in its discretion extend a certificate of approval pending final action on an application for renewal.

## **2809 CERTIFICATION LIST**

2809.1 OSSE shall publish and make available the list of nonpublic special education schools or programs, including the current level of approval of each school or program.

## **2810 APPLICATION AND OTHER FEES**

2810.1 A nonpublic school or program seeking a certificate of approval shall pay the following fees:

- |     |                         |                                  |
|-----|-------------------------|----------------------------------|
| (a) | Initial application     | One hundred dollars (\$100);     |
| (b) | Pre-approval inspection | One hundred dollars (\$100);     |
| (c) | Renewal application     | Seventy-five dollars (\$75); and |
| (d) | Returned check fee      | Twenty-five dollars (\$25).      |

2810.2 Fees are non-transferrable and non-refundable.

2810.3 In the case of a nonpublic special education school or program without an existing certificate of approval, OSSE may waive an initial application or other applicable fee if OSSE or another District of Columbia agency seeks to have a District of Columbia student accepted by the school or program.

**2811                    FACILITIES, RESOURCES, AND MATERIALS**

- 2811.1                A nonpublic special education school or program shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the special education and related services specified by the IEPs of its enrolled students.
- 2811.2                A nonpublic special education school or program shall provide all resources and materials required to accommodate students with disabilities in obtaining, as specified in their IEPs, a regular high school diploma or alternative certificate of completion in accordance with District of Columbia standards.
- 2811.3                A nonpublic special education school or program shall not deliver instruction online or through some other form of distance learning except as expressly authorized by the LEA of enrollment in accordance with the LEA of enrollment's policy or standards for online or distance learning.

**2812                    INDIVIDUALIZED EDUCATION PROGRAMS AND GRADUATION PLANNING**

- 2812.1                Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall provide special education and related services in accordance with the student's IEP.
- 2812.2                The LEA of enrollment and the nonpublic special education school or program are both responsible for ensuring that the student has a complete and current IEP. The LEA is responsible for ensuring compliance with the IDEA and student progress toward academic and IEP goals and, consistent with that responsibility, may request that the nonpublic school or program provide information to ensure compliance. A nonpublic special education school or program shall work with the LEA of enrollment to maintain compliance with the IDEA as follows:
- (a)            If the nonpublic special education school or program becomes unable to implement any portion of the student's IEP, the school or program shall immediately notify the LEA of enrollment in writing and consult with the LEA of enrollment about whether an IEP team meeting is required;
  - (b)            If the nonpublic special education school or program becomes aware that the student's IEP is not being fully implemented due to factors beyond its control the school or program shall immediately notify the LEA of enrollment in writing and consult with the LEA of enrollment about whether an IEP team meeting is required;
  - (c)            If it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or any other timeline

specified in the IDEA has lapsed or will imminently lapse, the school or program shall immediately notify the LEA of enrollment in writing; and

- (d) In the event that the LEA of enrollment convenes an IEP team meeting, whether as a result of a situation referred to in paragraph (a) or (b) above or otherwise, the nonpublic special education school or program shall assist the LEA of enrollment in convening the meeting and respect the due process rights afforded to a student and his or her parents under the IDEA.

2812.3 Pursuant to 34 C.F.R. § 300.325(b), a nonpublic special education school or program shall initiate IEP team meetings when requested by the LEA in writing.

- (a) The nonpublic special education school or program shall provide written notification of all IEP team meetings that it initiates and invite the LEA of enrollment and all required team members, including relevant nonpublic school staff.
- (b) The notice shall include the time, date, and location of the meeting.
- (c) The nonpublic special education school or program shall document its attempts to invite the LEA of enrollment to the IEP team meeting, as well as the LEA's involvement with any IEP team decision and the LEA's agreement with any proposed changes to the IEP which result from any meeting.

2812.4 A nonpublic special education school or program shall require one (1) or more of its staff to attend meetings to review or determine a student's placement as requested by the LEA.

2812.5 The LEA of enrollment shall ensure that all data required by OSSE regarding a student with a disability enrolled in a nonpublic special education school or program is entered into the District of Columbia's Special Education Data System ("SEDS") and that such data is accurate, up-to-date, and complete. OSSE shall provide SEDS access to a nonpublic special education school or program limited to the students enrolled in the school or program and in a manner consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Each nonpublic special education school and program shall cooperate with the LEA to maintain each enrolled student's IEP in SEDS. The failure to maintain current data as well as other actions or omissions that lead to incomplete data shall be considered a failure to provide information requested by the SEA in violation of D.C. Official Code § 38-2561.11(a)(4) (2012 Repl.).

2812.6 A nonpublic special education school or program shall implement all components of each student's IEP, unless it has been specifically agreed by the IEP team and authorized by the LEA and documented in writing that an entity other than the school or program will implement an item or items on the IEP. If the service is

provided by an entity other than the nonpublic special education school or program, the service must be invoiced pursuant to the provisions of Title 5, Subtitle A, Chapter 29 of the DCMR.

- 2812.7 Pursuant to 34 C.F.R. § 300.325(c), the LEA of enrollment shall remain responsible for compliance with the requirements of the IDEA for students served by nonpublic special education schools or programs, and OSSE shall monitor the LEA of enrollment's compliance with these requirements.
- 2812.8 When requested by the LEA of enrollment, the nonpublic special education school or program shall administer or arrange assessments and screenings to determine continued eligibility for special education and related services as required by 34 C.F.R. § 300.303 or for any other purpose under the IDEA. As provided in Title 5, Subtitle E, Section 3006 of the DCMR, the IEP team shall determine the continued eligibility of a child. Relevant members of the nonpublic school staff shall participate in an IEP team meeting to determine continued eligibility of a child when requested by the LEA.
- (a) The nonpublic special education school or program shall administer or arrange for the provision of assessments and screenings consistent with the IDEA and any hearing officer decision governing the assessment and screenings pursuant to 34 C.F.R. § 300.513; and
  - (b) The nonpublic special education school or program shall submit an invoice to OSSE for any assessments and screenings in the next invoicing period at OSSE established rates in accordance with OSSE's rate confirmation.
- 2812.9 As part of the IEP team process, staff members of the nonpublic special education school or program who are members of the student's IEP team shall ensure that each IEP:
- (a) Meets all the requirements of the IDEA, 20 U.S.C. § 1414(d); and 34 C.F.R. §§ 300.320; 300.321; 300.322 and 300.324;
  - (b) Contains a Behavior Intervention Plan ("BIP"), whenever appropriate, that is based on a Functional Behavior Assessment ("FBA") and includes a plan for emergency behavioral interventions; and
  - (c) Provides for extended school year services ("ESY") only if the IEP team decides, on an individual basis, that ESY services are necessary for the provision of a free appropriate public education ("FAPE") to the student.
- 2812.10 The nonpublic special education school or program shall ensure that a parent is able to understand the proceedings of an IEP meeting and shall arrange for an

interpreter for parents with deafness or whose native language is other than English.

2812.11 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce written reports for the parent(s) and the LEA of enrollment on at least a quarterly basis.

2812.12 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the graduation requirements of the LEA of enrollment and produce a written report for the parent(s) and the LEA of enrollment on at least an annual basis.

2812.13 A nonpublic special education school or program shall ensure that the confidentiality of student records is kept strictly in accordance with FERPA, and any other applicable privacy laws and regulations.

## **2813 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS**

2813.1 A nonpublic special education school or program shall implement all services ordered by any Hearing Officer Decision (“HOD”) pursuant to 34 C.F.R. § 300.513, or a Settlement Agreement (“SA”) entered into pursuant to 34 C.F.R. § 300.510(d) or 300.506(b)(6) with respect to each attending student, including providing all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the nonpublic special education school or program. Failure of an LEA timely to notify a nonpublic school or program of an HOD or SA will not result in any adverse findings against the nonpublic school or program. Compensatory education ordered by an HOD or agreed to by the LEA in a settlement agreement shall be paid for by the LEA.

2813.2 In the event that the nonpublic special education school or program is or becomes unable to implement any aspect of a student’s HOD or SA, including for the reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA.

2813.3 A nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA if it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or other compliance requirement of a HOD or SA has lapsed or will imminently lapse. The nonpublic special education school or program shall also consult with the LEA that is a party to the HOD or SA regarding whether an IEP

team meeting is required and assist the LEA with any IEP team meeting that may be scheduled in regard to compliance with the HOD or SA.

## **2814 TRANSITIONS TO LESS RESTRICTIVE SETTINGS**

- 2814.1 In accordance with the IDEA requirement that students be placed in the least restrictive environment, IEP planning and service delivery by LEAs of enrollment and nonpublic special education schools or programs shall be designed to support the transition of a student to a less restrictive setting when determined appropriate by the IEP team. The nonpublic special education school or program shall ensure that the IEP teams for students attending the school or program consider a student's transition status at least annually as a component of annual IEP review.
- 2814.2 When an IEP team member believes that a District of Columbia student is ready to transition into a less restrictive setting, an IEP team meeting shall be convened to discuss a change in placement, consistent with the IDEA.

## **2815 CURRICULUM, GRADES, AND PROMOTION REQUIREMENTS**

- 2815.1 Prior to accepting a student, the nonpublic school or program must certify to OSSE and the LEA of enrollment that the school or program can meet the curricular requirements for graduation from the LEA of enrollment.
- 2815.2 Except as provided in Subsection 2815.3 of this section, a nonpublic special education school or program that serves District of Columbia students with disabilities shall ensure instructional alignment with the District of Columbia's learning standards, grades, promotion, and graduation requirements, consistent with Title 5 of the DCMR, including compliance with any amendments to these respective policies, procedures, and rules.
- 2815.3 A nonpublic special education school or program that serves District of Columbia students with disabilities that cannot ensure instructional alignment must obtain authorization from the LEA of enrollment prior to any deviation from LEA requirements and submit such authorization to OSSE.
- 2815.4 A nonpublic special education school or program shall adhere to the grades and promotion policies and procedures of the LEA of enrollment in which each student is enrolled as well as District of Columbia graduation requirements.
- 2815.5 Nonpublic special education schools or programs that serve District of Columbia students with disabilities that cannot adhere to the grades and promotion policies and procedures of the LEA of enrollment must obtain authorization from the LEA of enrollment prior to any deviation from LEA requirements and submit such authorization to OSSE.

## **2816 LEARNING TIME**

- 2816.1 The school year of a nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days, exclusive of any Extended School Year (ESY) period mandated by an IEP.
- 2816.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six (6) hour minimum instructional school day requirement shall not be applicable to any evening school program, prekindergarten program, or other alternative program approved by OSSE.
- 2816.3 A nonpublic special education school or program that seeks to incorporate a school day that does not meet the six (6) hour minimum into the academic calendar shall submit a verification that other instructional days have been lengthened in order to ensure that the average number of instructional hours over the course of the school calendar meets or exceeds six (6) hours per day. This includes, but is not limited to, a routine early release day held in order to provide documented professional development or other mandatory faculty co-planning.

## **2817 STATE-WIDE ASSESSMENTS**

- 2817.1 In accordance with Chapter 23 of Title 5, Subtitle A, and Section 3019 of Title 5, Subtitle E of the DCMR, every nonpublic special education school or program shall ensure that every District of Columbia student with an IEP attending a nonpublic special education school or program is appropriately included in either the District of Columbia statewide assessment or alternate assessment approved by OSSE. A nonpublic special education school or program shall ensure that statewide assessments are administered according to the test security guidelines published by OSSE.
- 2817.2 The nonpublic special education school or program shall ensure that, when appropriate, a student's IEP shall include a specific determination that a student is eligible for participation in the alternate assessment based upon the alternate academic achievement standards, OSSE guidelines for participation in alternate assessments, and other applicable guidance issued by OSSE.
- 2817.3 Unless specifically required by a student's IEP, the nonpublic special education school or program and the LEA of enrollment shall not substitute an alternate assessment based on alternate academic achievement standards for the general statewide assessment for any student.

## **2818 INDIVIDUALIZED BEHAVIOR SUPPORT AND DISCIPLINE**

- 2818.1 All nonpublic special education schools and programs must ensure compliance with the IDEA's discipline procedures and related procedural safeguards. Behavior support programs and plans used by a nonpublic special education

school or program shall be based on an individual behavior intervention plan and the utilization of school-wide positive behavior intervention supports.

2818.2 All nonpublic special education schools and programs shall be prohibited from using demeaning, violent, or coercive treatment with students. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.

2818.3 A nonpublic special education school or program shall notify the LEA of enrollment within one (1) business day of a decision by the school or program to suspend or expel a student.

2818.4 OSSE will collect disciplinary data from nonpublic schools and the LEA of enrollment on at least an annual basis. A pattern or practice of using suspension as a behavioral management technique shall be grounds to revoke a school's certificate of approval.

## **2819 STUDENT-INITIATED TIME AWAY FROM STRUCTURED ACTIVITY**

2819.1 A nonpublic special education school or program shall allow students to initiate time away from structured activity as a means of regaining self-control. Student-initiated time away from structured activity:

- (a) Shall occur in designated areas within the classroom or, as appropriate and as outlined and measured in a student's Behavior Intervention Plan ("BIP"), in other areas within the school, as long as there is direct supervision;
- (b) Be documented in a student's BIP;
- (c) Be monitored for effectiveness; and
- (d) May not be imposed upon a student as a form of seclusion or punishment.

## **2820 USE OF RESTRAINTS**

2820.1 The use of physical restraints is prohibited in all nonpublic special education schools and programs except:

- (a) When the intervention is necessary in emergency circumstances, as defined in this chapter, to protect the student or other person from imminent, serious physical harm; and other less intrusive, nonphysical interventions have failed or been determined inappropriate; or



- (b) Where the use of restraint is included in the student's IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the student's IEP.

2820.2 Any physical restraint shall be applied only by nonpublic special education school or program personnel who are trained and certified in the appropriate use of specific, evidence-based techniques. Copies of training certifications shall be maintained on file at the nonpublic special education school or program.

2820.3 The use of physical restraints in cases of an emergency shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student or other person is no longer in imminent danger. Nonpublic special education school or program personnel shall provide the student with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint. A member of the staff shall personally observe the student during the entire duration of the use of the restraint in order to assess the need for continued restraint.

2820.4 Nonpublic special education schools and programs shall not use restraints, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff with District of Columbia students.

2820.5 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student's refusal to comply with a nonpublic special education school or program rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.

2820.6 The use of restraints is limited or prohibited as follows:

- (a) No physical restraint shall be administered in such a way that the student's breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student or other person is no longer at risk of causing imminent, serious physical harm, or the authorized use of restraint in a student's IEP has been satisfied. A staff member shall continuously assess the student to determine if medical attention is required.
- (b) If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless the staff member determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer at risk of causing

imminent, serious physical harm or the authorized use of restraint in a student's IEP has been satisfied.

- (c) Except in emergency circumstances or as authorized in a student's IEP, the use of restraint practices with a student whom the nonpublic special education school or program knows has been sexually or physically abused is prohibited.
- (d) Except in emergency circumstances or as authorized in a student's IEP, no physical restraint shall be administered if the student has a medical or psychological condition contraindicative to restraint. The use of chemical restraints is prohibited in all nonpublic special education schools and programs. A drug ordered by a licensed physician as part of ongoing medical treatment or determined by a licensed physician to be medically necessary is not considered a chemical restraint.
- (e) A nonpublic special education school or program shall not use any form of mechanical restraint on a District of Columbia student.
- (f) A nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student.

## **2821 SECLUSION**

2821.1 A nonpublic special education school or program shall not use any form of seclusion on a District of Columbia student except in emergency circumstances, as defined in this chapter. Use of seclusion except in cases of emergency shall be grounds for denying or revoking a certificate of approval.

2821.2 A space used for seclusion shall, at a minimum:

- (a) Be free of objects and fixtures with which a student could self-inflict bodily harm;
- (b) Provide school personnel an adequate view of the student from an adjacent area in accordance with this section; and
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.

2821.3 In the event of seclusion, nonpublic special education school or program personnel shall view a student placed in seclusion at all times, by remaining within sight of the student, consistent with Subsection 2821.5 of this section, and shall provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.

2821.4 Seclusion shall only be applied by nonpublic special education school or program personnel who are trained in the appropriate use of appropriate techniques supported by written policies and procedures established by the nonpublic school or program and consistent with regulations and guidance issued by OSSE.

2821.5 Nonpublic special education school or program personnel shall continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior personnel shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.

2821.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

## **2822 RESTRAINT AND SECLUSION REPORTING AND FOLLOWUP**

2822.1 If any form of restraint or seclusion is used, the nonpublic special education school or program shall prepare a written report consistent with the requirements of this section.

2822.2 A written incident report shall include the following information:

- (a) The student's name;
- (b) The date of the incident;
- (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;
- (d) A description of relevant events leading up to the restraint or seclusion;
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;
- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to students, personnel or others) and/or property damage;

- (i) A list and signatures of the school personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the short-term planned approach to addressing the student's behavior in the future.

2822.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's record within one (1) business day of the incident.

2822.4 A copy of the written incident report shall be sent within one (1) business day of the incident to the student's parent(s), the LEA of enrollment, and any other District of Columbia agency involved in the student's placement.

2822.5 If the restraint or seclusion incident involved physical injury to, or caused by, a student, the nonpublic special education school or program shall report the incident in writing within one (1) business day to the LEA of enrollment and other District of Columbia agency involved in the student's placement, by facsimile or other electronic transmission, and to the parent by the same method, as feasible. If notification to the parent in writing is not possible within one (1) business day, the school or program shall contact the parent by telephone and transmit the written notification within one (1) business day.

2822.6 The IEP team shall meet within ten (10) school days of the incident to consider the need for a FBA and BIP and to discuss non-physical and non-restrictive de-escalation strategies. If the student has a BIP in place, the IEP team shall review and revise as appropriate. If the student is unable or unwilling to attend the IEP team meeting, the nonpublic special education school or program shall meet with the student individually to discuss the incident as appropriate after consulting with the LEA of enrollment.

## **2823 INCIDENT REPORTING**

2823.1 If an incident not involving restraint or seclusion involves physical injury to, or caused by, a student, or a threat of safety to, or caused by, a student, the nonpublic special education school or program shall report the incident in writing within one (1) business day to OSSE, the LEA of enrollment, and any other District of Columbia agency involved in the student's placement, by facsimile or other electronic transmission, and to the parent by the same method, as feasible. If notification to the parent in writing is not possible within one (1) business day, the school or program shall contact the parent by telephone and transmit the written notification within one (1) business day.

## **2824 EMERGENCY REPORTING**

2824.1 In the event of fire or any other form of emergency situation, the nonpublic special education school or program must provide the LEA of enrollment and OSSE with notification in writing within one (1) business day, and status reports thereafter as requested by OSSE.

## **2825 REPORTING SUSPECTED ABUSE OR NEGLECT**

2825.1 A nonpublic special education school or program shall make reports of suspected neglect or abuse as defined in D.C. Official Code § 16-2301(9) and (23), respectively (including compliance with the law on compulsory school attendance) as required by all relevant federal, state, and local law and shall report the suspected abuse or neglect to OSSE no later than fifteen (15) days from the date the school or program first suspects the occurrence.

## **2826 EXTENDED SCHOOL YEAR AND YEAR-ROUND PROGRAMS**

2826.1 To ensure placement decisions are made on an appropriate and individual basis, no student shall be placed in a:

- (a) Nonpublic school or program that requires all students to attend Extended School Year (ESY) programming regardless of need or as a condition of enrollment;
- (b) “Year-round” school unless the student’s IEP team would otherwise require ESY service in a school with a traditional calendar or the team has determined that there is no other school or program with a COA that can implement the student’s IEP; or
- (c) Nonpublic school or program that requires all students to attend programming that is offered outside the time frame of the regular instructional day and is not included in the school or program’s per diem educational rate.

## **2827 ATTENDANCE AND TRUANCY**

2827.1 Consistent with An Act to require the payment of tuition on account of students who attend the public schools of the District of Columbia, and for other purposes, approved September 8, 1960 (74 Stat. 854; D.C. Official Code §§ 38-201, *et seq.* (2012 Repl.)), a nonpublic special education school or program shall require that a District of Columbia student enrolled in its school or program shall attend every regular instructional school day and remain in school until the official closure of the school day, unless otherwise excused.

2827.2 A nonpublic special education school or program shall maintain a policy to allow a student to enter and attend school when the student arrives late for school and

shall record the student's tardiness or partial absence if a student fails to attend school for the entire day.

- 2827.3 A nonpublic special education school or program shall adhere to and maintain policies and procedures in conformance with the attendance and truancy policies and procedures of each LEA of enrollment (except as provided in Subsection 2827.4(b) of this section) and the District of Columbia as set forth in Title 5, Subtitle A, Chapter 21 of the DCMR.
- 2827.4 If a nonpublic special education school or program serves students placed in its school or program from multiple District of Columbia LEAs, it is the responsibility of the nonpublic school or program to have and make available upon request, a written copy of each respective LEA's attendance and truancy policy. In consultation with each LEA of enrollment, the nonpublic school or program shall either:
- (a) Apply the policy of the LEA of enrollment to each student enrolled in that LEA; or
  - (b) Select the attendance policy of one (1) District of Columbia LEA of enrollment to apply to all students attending the nonpublic school or program.
- 2827.5 The designated attendance policy shall meet the minimum requirements of Title 5, Subtitle A, Chapter 21 of the DCMR and each LEA served by the nonpublic school or program.
- 2827.6 A nonpublic special education school or program shall provide written notification of its designated attendance policy to each LEA of enrollment and separately to OSSE in its certificate of approval application or application renewal, or upon request by OSSE.
- 2827.7 The nonpublic special education school or program shall submit to the LEA of enrollment and OSSE the same attendance report that was submitted to OSSE for payment of the school or program's invoice. The attendance report shall accurately reflect each student's attendance for every regular instructional school day, or portion thereof, for the respective billing cycle, identifying excused and unexcused absences in accordance with LEA designated absence codes. All absences shall be presumed to be unexcused unless otherwise marked as excused in an attendance report.
- 2827.8 A nonpublic special education school or program must adhere to the following requirements regarding unexcused absences:
- (a) A nonpublic special education school or program shall notify the LEA of enrollment in writing no later than two (2) instructional school days after

the accrual of five (5) unexcused absences by a District of Columbia student in a marking period or similar time frame so that the student's LEA may take actions including, but not limited to, the steps required by Title 5, Subtitle A, Section 2103 of the DCMR.

- (b) A nonpublic special education school or program shall notify the LEA of enrollment, in writing, not later than two (2) instructional school days after the accrual of ten (10) unexcused absences at any time within the school year. In each such case:
  - (i) The nonpublic special education school or program shall show documented evidence of efforts taken to enforce the applicable attendance policy(s), to reengage the student, to notify the LEA, and to enter notes and upload all documents into the appropriate reporting systems (*e.g.* SEDS).
  - (ii) The nonpublic special education school or program shall consult with the LEA of enrollment regarding whether or not the current placement or location assignment is appropriate and whether an IEP team meeting needs to be convened.
  - (iii) If an IEP Team meeting is convened, the nonpublic special education school or program and the LEA are responsible for convening the meeting as soon as possible to review the student's absences, to make recommendations, as appropriate, with regard to intervention strategies including, but not limited to those required by Title 5, Subtitle A, Section 2103 of the DCMR, and to make a determination regarding the continued appropriateness of the current placement.
- (c) A nonpublic special education school or program shall obtain written authorization from the responsible LEA to hold a placement open and to continue billing for tuition if a student has accrued:
  - (i) Ten (10) unexcused absences at any time during the school year; or
  - (ii) Seven (7) consecutive unexcused absences.
- (d) OSSE shall provide payment in accordance with guidance provided by the LEA, and supported by appropriate documentation
- (e) A nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay related service fees for days a student was unexcused for absence. OSSE will remit payment for related services on days a student is present and services were provided and on days make-up services are provided and appropriately documented;

- (f) Inform OSSE, in the attendance report accompanying the invoice for the billing period in which the student(s) absence(s) occurred, and include a copy of each notice required in this section, advise of the student's status, the student's anticipated date of return, and guidance received from the LEA regarding the students status and next step actions.
- (g) Except as allowed in this chapter, nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay for tuition services for unexcused absences exceeding fourteen (14) consecutive days.
- (h) Nonpublic schools and providers along with LEAs remain responsible for ensuring a free and appropriate public education ("FAPE") is continuously provided and for implementing attendance policies and regulations during the unexcused absence of a student, regardless of OSSE's authority to pay tuition under this section.

2827.9 When a student is absent, excused, for ten (10) or more days, consecutively or within an invoice billing period, a nonpublic special education school or program must adhere to the following requirements:

- (a) Upon notification from any source that a District of Columbia student placed at a nonpublic special education school or program has been temporarily relocated for non-educational reasons (*i.e.*, hospitalization, detainment), the nonpublic special education school or program shall:
  - (i) Notify the LEA of enrollment immediately in writing to disclose or request written information regarding the student's status;
  - (ii) Obtain written authorization from the responsible LEA regarding whether the student is to be withdrawn from the program;
  - (iii) Respond within two (2) business days to a request for records from the alternate facility or the sending LEA for the purpose of providing appropriate academic instruction and related services to the student at the alternate location; and
  - (iv) Inform OSSE, in the attendance report accompanying the invoice for the billing period in which the student(s) absence(s) occurred, of the date on which the change in the student's status took place, the student's current status, the anticipated date of return, and guidance received from the LEA regarding the student's status and next step actions.



- (b) If a nonpublic school or program has documented evidence that the requirements in Subsection 2827.9(a) of this section have been met, OSSE will pay full tuition charges for the first billing period in which the student(s) absence(s) occurred. If a student continues to be absent beyond the first billing period, OSSE will pay one quarter of the daily tuition rate, only, for the next billing period while the student is at the temporary location. Continuation of partial payment, one quarter of the daily tuition rate, beyond two (2) consecutive billing periods, must be requested and submitted to OSSE, in writing, by the LEA of enrollment. OSSE will not pay a nonpublic school or program, beyond two (2) consecutive billing periods when an entity other than the nonpublic school is receiving payment for providing educational services to the student during the time of absence.
- (c) A nonpublic special education school or provider shall not invoice OSSE and OSSE will not pay related service fees for days a student was excused for absence. OSSE will remit payment for related services on days a student is present and services were provided and on days make-up services are provided, and the services appropriately documented.
- (d) OSSE will not pay tuition or any other education fees to a nonpublic school or program during the time of absence for cases involving student detention which includes detention awaiting a court date and/or leading toward incarceration, for any period of time.

2827.10 OSSE, in its discretion, may seek a credit or refund for a payment made to a nonpublic special education school or program if later evidence is discovered that indicates that the payment was not allowable.

2827.11 Unless a detailed written plan has been submitted to and approved by OSSE in advance, no nonpublic special education school or program shall implement a system of rewards or incentives that provides monetary awards to students for attendance.

2827.12 OSSE will not pay for days a nonpublic school or program is closed. A nonpublic school or program may submit an invoice for costs accrued during any make-up days. The invoice must include a statement advising that a make-up day is included and identify the date the make-up day is replacing.

## **2828 TERMINATION OF SERVICE**

2828.1 A nonpublic special education school or program shall not terminate the service of any student, unless and until the LEA of enrollment has been informed, in writing, not less than fifteen (15) business days prior to the proposed date of termination.

2828.2 In the event of emergency circumstances, a nonpublic special education school or program shall not terminate the service of any student, unless and until the LEA of enrollment has been informed in writing, and written notice within one (1) business day of the incident. The LEA must proceed consistent with the requirements in 34 CFR §§ 300.504 and 300.530 through 300.536.

## **2829 PERSONNEL QUALIFICATIONS**

2829.1 A nonpublic special education school or program shall ensure that its organizational structure provides for the effective and efficient operation of the school or program, supervision of the school personnel, and supervision and safety of the students.

2829.2 Each member of the teaching staff shall hold a teaching certification or other applicable credential, as required by the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2829.3 Related service providers, whether employed or contracted by the nonpublic special education school or program, shall be appropriately certified, licensed or registered in their professional areas in alignment with requirements from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2829.4 A nonpublic special education school or program shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses (or equivalent), and evidence of child protective service and criminal background checks onsite. Access to personnel policies and files shall be immediately available to OSSE upon request, for the purposes of monitoring compliance with the requirements of this chapter.

2829.5 A nonpublic special education school or program shall complete child protective service and criminal background checks on all school personnel, including volunteer staff and independent contractors who provide services on behalf of the school or program, consistent with the District of Columbia requirements or the requirements of the State in which the nonpublic school or program is located.

## **2830 POLICIES AND PROCEDURES**

2830.1 A nonpublic special education school or program shall maintain on file, at minimum, written policies and procedures that address the following areas:

- (a) Mission statement;

- (b) Positive behavior support policy statement and school-wide positive behavior plan, including a school-wide crisis plan and disciplinary guidelines;
- (c) Emergency behavioral interventions, including use of seclusion and restraint as proscribed in this chapter;
- (d) Participation of all District of Columbia students in state-wide assessments;
- (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school or program;
- (f) Reintegration plan for return to a less restrictive environment;
- (g) Postsecondary transition services and transition planning, as appropriate;
- (h) Attendance and truancy;
- (i) Records management and confidentiality of student records;
- (j) Process for a student or parent to make a complaint to the nonpublic special education school or program about the services the student is receiving, including how to access OSSE's state complaint process;
- (k) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability;
- (l) A plan for meaningful participation by the parent, and other individuals authorized by the parent, in all aspects of the IEP process including, without limitation, eligibility determination and participation in IEP team meetings;
- (m) Supervision of students;
- (n) A plan for serving students with limited English proficiency;
- (o) Admissions and termination criteria;
- (p) Reporting of suspected child abuse or neglect;

- (q) Timely IEP implementation, including conducting and participating in IEP team meetings;
- (r) Conducting evaluations and reevaluations;
- (s) Professional development plan which ensures adequate staff education on policies and procedures;
- (t) Staff-student interactions within, outside school, including face-to-face and electronic communication and social media.

## **2831 PROFESSIONAL DEVELOPMENT AND TRAINING**

2831.1 A nonpublic special education school or program shall conduct personnel training at least once annually, regarding:

- (a) Evidence-based interventions;
- (b) Alignment of curriculum to state learning and graduation standards, including District Learning Standards;
- (c) Confidentiality of student information, including FERPA requirements;
- (d) Procedural safeguards for students and parents;
- (e) Positive behavior support;
- (f) Restraints/seclusion policies in accordance with this chapter;
- (g) Reporting of suspected abuse or neglect;
- (h) Emergency procedures including evacuation and fire drills;
- (i) Truancy; and
- (j) Equal employment opportunities.

## **2832 INFORMATION FOR STUDENTS**

2832.1 At least annually, a nonpublic special education school or program shall provide each student with complete and up to date information about its program, including at minimum its academic policies and school calendar, program contact information, IEP process, policies on behavior management, student rights and privileges, and the process for making a confidential complaint about the services or treatment he or she is receiving at the school or program.

## **2833 INFORMATION FOR PARENTS**

- 2833.1 At least annually, a nonpublic special education school or program shall provide every parent with complete and up to date information about its program, including at minimum its academic policies and school calendar, program contact information, IEP process, policies on behavior management and emergency behavioral interventions, including the use of seclusion and restraint, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school or program and, for residential placements, school travel policies.
- 2833.2 In addition to the information set forth in the above subsection, the nonpublic special education school or program shall provide information to all parents regarding monitoring by OSSE, including the fact that students may be asked to participate in interviews or other fact-gathering activities with OSSE representatives.

## **2834 MEDICAID REIMBURSEMENT**

- 2834.1 A nonpublic special education school or program shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students.
- 2834.2 (a) A nonpublic special education school, program or related service provider shall keep organized and confidential records that detail client specific information regarding all specific Medicaid reimbursable services provided for each individual recipient of services and retain those records for review. All such documentation shall include:
- (i) The student's complete IEP (with relevant provider signatures as required to meet prescription/referral/recommendation requirements);
  - (ii) All evaluation reports (with relevant provider signatures as required to meet prescription/referral recommendation requirements);
  - (iii) Service tracking documentation;
  - (iv) Progress notes;
  - (v) Billing records; and
  - (vi) Practitioner credentials for service providers. Services must be provided by licensed or qualified practitioners. In certain cases, supervisory requirements may apply.

- (b) The following data elements are required as part of the service documentation:
- (i) School District Name/Provider Number: Name of the school district where services are provided and the provider number used to bill the Medicaid program;
  - (ii) Student Name: Student's complete legal name;
  - (iii) Date of Birth: Student's complete date of birth;
  - (iv) Student Medicaid Number: Student's Medicaid identification number;
  - (v) Date: The date a Medicaid service is provided to a student;
  - (vi) Type of Medicaid approved service provided;
  - (vii) Student's progress toward specified clinical objectives: Dated and signed notes that document the degree of measureable progress toward student treatment goals and objectives. These notes should be a one to two (1-2) sentence summary related to the specific therapy session;
  - (viii) Activity/Procedure Note: A written description of the service provided to the student. This must document the extent and duration of the medical service provided;
  - (ix) Service Setting (Group/Individual): Indicate if the student received services on an individual basis or in a group setting;
  - (x) Service Time: The quantity of service provided to the student should be recorded as an amount of time (example: twenty (20) minutes). This can capture the cumulative time the provider spent delivering services over the course of the day;
  - (xi) Name and clinical discipline of service provider;
  - (xii) Signatures: The signature of the medical professional providing services must comply with generally accepted standards for record keeping within the applicable provider type as they may be found in laws and regulations of the relevant board of registration. Providers whose services require supervision must have documentation cosigned in accordance with the applicable standards for the provider type;

- (xiii) Attendance Report: An attendance report including specific days of attendance and absence for each student; and
- (xiv) Annual Parental Medicaid Consent forms: Obtain parental consents before the first (1<sup>st</sup>) time the student's or parent's Medicaid benefits are going to be accessed and then an annual parent notification thereafter.

2834.3 The frequency, duration and scope of services shall be specified in the student's IEP consistent with the IDEA and its implementing regulations.

2834.4 As requested by OSSE, a nonpublic special education school or program shall enter into a contract confirming its rates for Medicaid purposes and consistent with the Placement Act requirements.

2834.5 When considering residential placements, the LEA of enrollment shall give student placement preference to facilities that are Medicaid eligible and qualify with regard to providing services specified by an IEP.

2834.6 All progress note documentation must be completed in SEDS within five (5) business days of a student-level transactional event.

## **2835 ANNUAL CERTIFICATE OF COMPLIANCE**

2835.1 Pursuant to D.C. Official Code § 38-2561.08(d) (2012 Repl.), a nonpublic special education school or program shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school or program's regular school year, using such forms as shall be provided by OSSE.

## **2836 DISCLOSURE OF INFORMATION**

2836.1 A nonpublic special education school or program shall make immediately available to OSSE and to the LEA of enrollment, on request, information on all aspects of the school's program(s), staff credentials, criminal background checks, child protective services checks, certification by agencies other than OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, including without limitation, attendance data and incident reports.

2836.2 A nonpublic special education school or program shall make available to OSSE, any other information that OSSE may reasonably require in exercising its duties as the SEA.

2836.3 The following documents shall be maintained onsite at the school and immediately made available for review upon request:

- (a) Current certificate of approval by the District of Columbia and all other relevant certifications and licensing bodies;
- (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws;
- (c) Copies of all required professional certifications and licenses of all school personnel; and
- (d) Evidence of criminal background and child protective services checks.

## **2837 MONITORING**

2837.1 Pursuant to D.C. Official Code § 38-2561.09 (2012 Repl.), OSSE shall schedule monitoring visits to each nonpublic special education school or program at least once during the validity of each period covered by a certificate of approval, or once every three (3) years, to verify compliance with this chapter, federal and local law. Prior to a scheduled monitoring visit, a nonpublic special education school or program shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur.

2837.2 Representatives of OSSE may make unannounced visits to a nonpublic special education school or program to observe program implementation, review student records, and conduct interviews with students and staff. OSSE, as the District of Columbia's SEA, is entitled to immediate access to all student records for monitoring and investigative purposes and shall maintain their confidentiality as required by law. The nonpublic special education school or program shall cooperate in full with any requests for documentation, file review, interviews and access to the facility during an unannounced visit. OSSE may interview students on site at a school or program without school representatives being present. OSSE shall make its requests in a manner least intrusive to the delivery of instruction and services to students.

2837.3 OSSE shall issue to the nonpublic special education school or program a monitoring report at least once in every period of validity for a certificate of approval, which shall include any findings of noncompliance with D.C. Official Code § 38-2561 (2012 Repl.) and this chapter. Any finding of noncompliance that constitutes a violation of D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter shall be clearly documented.

## **2838 PROBATION FOR NONCOMPLIANCE**

2838.1 OSSE may place a nonpublic special education school or program on probationary approval status at any time, when OSSE determines that the school



or program is not in compliance with the Placement Act and the standards of this chapter. OSSE shall notify the school or program of the areas of noncompliance. The period of probation shall not exceed six (6) months.

2838.2 A nonpublic special education school or program in probationary approval status shall complete and document in writing within timelines specified by OSSE, the efforts taken by the school to come into all identified areas of noncompliance. If, based on the evidence, OSSE determines that the nonpublic special education school or program complies with the standards of this chapter, OSSE shall reinstate the school or program's certificate of approval with full approval status. If the noncompliance is not corrected within the timeframe established by OSSE, OSSE shall take steps to revoke, refuse to renew, or suspend the certificate of approval.

2838.3 A nonpublic special education school or program with a probationary certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. § 300.513.

## **2839 DENIAL, REVOCATION, REFUSAL TO RENEW, OR SUSPENSION**

2839.1 In the event OSSE determines a nonpublic special education school or program does not comply with or has violated D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter, OSSE may in its discretion take action to deny, revoke, refuse to renew, or suspend the certificate of approval.

2839.2 Pursuant to D.C. Official Code § 38-2561.11(b) (2012 Repl.), a written notification of an intent to deny, revoke, refuse to renew, or suspend a certificate of approval shall specify the violations or failure to meet the requirements of D.C. Official Code § 38-2561.11(a) (2012 Repl.) or this chapter, include a statement of all the facts upon which OSSE bases its notification of intent, as well as notice of an opportunity to be heard. The written notification shall be accompanied by copies of all documentation supporting the facts upon which the notification is based, as appropriate. In the event a nonpublic special education school or program does not timely request a hearing under Title 5, Subtitle A, Section 2840 of the DCMR and the Placement Act, OSSE's intended action shall be final and take effect. OSSE shall give notice to the school or program of the final action.

## **2840 CERTIFICATE OF APPROVAL HEARING PROCESS**

2840.1 A nonpublic special education school or program may request an evidentiary hearing to review a notification of a violation and intent to deny, revoke, refuse to renew, or suspend the school or program's certificate of approval under D.C. Official Code § 38-2561.11(a) (2012 Repl.).

- 2840.2 A nonpublic special education school or program shall request such hearing in writing, no later than thirty (30) days after the receipt date of a written notification of violation and intent to take action regarding the school or program's noncompliance. A hearing request involving a nonpublic special education school or program's aversive intervention policy or practice shall be submitted to OSSE in writing not later than ten (10) days after the receipt date of the written notification of noncompliance.
- 2840.3 The hearing shall be conducted by an independent panel (panel) composed of three (3) persons selected by the State Superintendent of Education.
- 2840.4 The panel shall not contain any person who has participated in the determination being reviewed.
- 2840.5 The nonpublic special education school or program's written request for a hearing shall include the following:
- (a) A concise statement of facts regarding each specific violation, finding, or action of which the school or program seeks review;
  - (b) The specific basis for opposing each violation, finding or action subject to review, including the identification of any specific document submitted as part of the record to support the nonpublic special education school or program's position;
  - (c) The specific relief requested;
  - (d) The statutory and factual justification for the relief requested;
  - (e) Two (2) copies of all documentary evidence and an index of the documents for consideration by the panel; and
  - (f) A request for an oral presentation consistent with Section A-2843.10 if the school or program seeks an opportunity for an oral presentation at the hearing.
- 2840.6 OSSE may, in its discretion, respond in writing to the school or program's submissions with regard to the hearing, not later than five (5) days prior to the hearing date.
- 2840.7 The hearing shall be held not later than thirty (30) days after the receipt date of the written request for a hearing, except that a hearing shall be held within fifteen (15) days after the receipt date of a request for a hearing in a case involving aversive intervention policies or practice.

- 2840.8 The nonpublic special education school or program shall continue to provide special education and related services to a District of Columbia student consistent with a student's IEP; and may submit invoices for such services consistent with this chapter and a final decision by the panel.
- 2840.9 The written decision of the panel shall be issued within ten (10) days after a hearing is concluded.
- 2840.10 The decision of the panel shall be the final agency action.
- 2840.11 OSSE shall publish the final decision issued by the panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic special education school or program, and other relevant parties as OSSE deems appropriate including LEAs, and other government officials within or outside the District of Columbia.

## **2341 ACTION FOLLOWING CHANGE IN COA STATUS**

- 2841.1 If OSSE denies an application for, refuses to renew, suspends, or revokes a certificate of approval for a nonpublic special education school or program subject to this chapter, the following shall occur:
- (a) OSSE shall provide written notification of its decision to any sending local education agency (LEA of enrollment) with children in the nonpublic school or program;
  - (b) Each LEA of enrollment shall notify the parent that the nonpublic school or program has failed to qualify for a certificate of approval;
  - (c) The IEP team shall schedule an IEP Team meeting to determine an appropriate placement for the student; and
  - (d) OSSE shall issue a location assignment upon receiving notification from the LEA of enrollment that a student continues to require a placement in a nonpublic school or program placement.
- 2841.2 The denial of an application, refusal to renew, suspension, or revocation of a certificate does not invalidate a student placement by court order or hearing officer decision (HOD). The LEA of enrollment shall convene an IEP team meeting to determine if the placement is appropriate and, if necessary, seek a modification of the court order or HOD.

## **2842 RATES – GENERAL**

- 2842.1 OSSE shall establish and publish on an annual basis, or more frequently as needed, maximum rates to be paid for tuition and related services to nonpublic

special education schools and programs providing special education and related services to students funded by the District of Columbia.

- 2842.2 On an annual basis, all nonpublic special education schools and programs shall submit documentation in support of their requested rates to OSSE for review, for each school or program location. OSSE shall issue an annual rate confirmation to each nonpublic school or program location, and the right to rate reconsideration pursuant to Title 5, Subtitle A, Section 2850 of the DCMR. A nonpublic special education school or program must obtain an OSSE rate confirmation, for each school or program location, prior to service provision or invoicing.
- 2842.3 Nonpublic special education schools or programs must seek a rate confirmation for all services not already approved by OSSE before the services are rendered or invoiced.
- 2842.4 A nonpublic special education school or program shall not invoice OSSE in excess of its approved rates as authorized in the annual rate confirmation.
- 2842.5 Nothing in this chapter shall prohibit OSSE from:
- (a) Authorizing and accepting a rate higher than the rates set by this chapter in situations in which there is no other appropriate placement for an individual child;
  - (b) Entering into contracts with nonpublic special education schools or programs for competitive rates or from recognizing competitive rates negotiated by District of Columbia LEAs or other District of Columbia agencies; or
  - (c) Paying for all IDEA services ordered in an HOD or court order resulting from a due process complaint filed under IDEA.
- 2842.6 A nonpublic school or program shall not submit for approval, or charge the District of Columbia at, a rate higher than a rate charged to other jurisdictions or to the private-paying general public for the same or a comparable service.
- 2842.7 A nonpublic special education school or program shall provide, upon request, a copy of all tuition and fee schedules provided to or charged to the private-paying general public.
- 2842.8 A nonpublic special education school or program shall not require the parents of a student enrolled in its school or program and funded by the District of Columbia, to sign a contract or agreement making the parents responsible for tuition and related services costs.

**2843 NONPUBLIC SPECIAL EDUCATION SCHOOL OR PROGRAM RATES ESTABLISHED IN ANOTHER STATE**

2843.1 Pursuant to the following sections, a nonpublic special education school or program may request that OSSE recognize a rate or set of rates be confirmed for a specific school location, under its operation, which has been approved by another state, or political subdivision within a state, based upon a rate-setting methodology OSSE deems to be reasonable. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE's acceptance of the rate will be applied to each individual location approved and listed within the provided state approval document(s), only. School locations not listed and approved within the provided document(s) will not receive the state approved rate. If another jurisdiction's rate-setting methodology results in a set of rates for a given school or program (for example, a per diem tuition rate and/or related service(s) rates) the set of rates shall be recognized by OSSE in total.

2843.2 A nonpublic special education school or program shall submit to OSSE documentation that supports the rate(s) established in another state in an appropriate electronic format, annually or within five (5) business days after the date a student is enrolled at the nonpublic special education school or program. The documentation submitted to OSSE shall include the following information:

- (a) A complete set of all documents submitted to the rate-setting state or political subdivision;
- (b) Copies of all communications and notices received from the rate-setting state, or political subdivision within a state, describing all limitations to the rates including, without limitation, the effective dates;
- (c) Information relating to bundling related service(s) in the per diem education rate; and
- (d) The school year and total number of regular school days in the year for which the rate(s) will be paid.

**2844 DAY AND RESIDENTIAL PROGRAM TUITION RATE ESTABLISHED BY THE DISTRICT**

2844.1 Effective July 1, 2011, the maximum annual per student tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be based on the funding established by the Uniform Per Student Funding Formula ("UPSFF") for students with disabilities enrolled in a District of Columbia public school.

- 2844.2 The maximum per diem tuition rates for non-extended school year (ESY) school days shall be derived by dividing the maximum annual per student tuition rate by one hundred eighty (180).
- 2844.3 If the District's annual budget for a next fiscal year (which begins on October 1) has not been approved by Congress by October 1, the most current OSSE Rate Confirmation shall remain in effect until such time as the District's annual budget has been approved by Congress.
- 2844.4 If the final version of the UPSFF enacted into law for a fiscal year differs from the UPSFF submitted to the U.S. Congress, OSSE shall reconcile payments consistent with the final UPSFF. Within sixty (60) business days after the effective date of the final UPSFF, the amounts paid to a nonpublic special education school or program or related service provider shall be reconciled in the following manner:
- (a) OSSE will communicate the new rate and calculate the change;
  - (b) OSSE will inform the nonpublic school of the reconciliation method and next step actions.

**2845 MAXIMUM ANNUAL AND PER DIEM PER STUDENT TUITION RATES**

- 2845.1 The Maximum Annual Per Student Tuition Rate to be paid by the District of Columbia for a school year of one hundred eighty (180) regular instructional days shall be calculated according to the following formula:

$$+ \frac{\text{UPSFF Special Education Schools per Pupil Allocation} + \text{UPSFF Level 4: Special Education per Pupil Supplemental}}{\text{Maximum Annual Per Student Tuition Rate}}$$

- 2845.2 The Maximum Per Diem Tuition Rate to be paid by the District of Columbia for regular instructional days shall be calculated according to the following formula: Maximum Annual Per-Student Tuition Rate divided by one hundred eighty (180) days.
- 2845.3 Unless the requirements of paragraph (a) of this subsection are met, a school day, excluding Extended School Year ("ESY") programming that does not meet the six (6) hour minimum instructional school day requirement, shall be billed on a pro rata hourly basis based on each school or program's per diem tuition rate as established in this chapter. OSSE shall apply a debit to the account of or seek a refund from any nonpublic special education school or program found to have overcharged OSSE in violation of this section.
- (a) A nonpublic special education school or program that seeks to incorporate a school day that does not meet the six (6) hour minimum into the academic calendar shall submit a written verification that other

instructional days have been lengthened in order to ensure that the average number of instructional hours over the course of the school calendar meets or exceeds six (6) hours per day. This includes, but is not limited to, a routine early release day held in order to provide documented professional development or other mandatory faculty co-planning. A nonpublic special education school or program shall provide written notification of such designation to each LEA and separately to OSSE through the following methods: (1) in the COA application or application renewal; (2) in the COA Annual Certificate of Compliance; or (3) upon request by the OSSE Nonpublic Payment Unit (“NPU”).

2845.4 The Maximum Per Diem Tuition Rate does not apply to homebound or visiting home instruction as described in this chapter. Homebound or visiting home instruction must be reviewed and approved by OSSE prior to implementation and invoice submission.

2845.5 The maximum annual and maximum per diem tuition rates shall be published annually on the OSSE website.

**2846 RATE SETTING – PER DIEM TUITION RATES FOR NONPUBLIC SPECIAL EDUCATION SCHOOLS AND PROGRAMS**

2846.1 Except as described in Subsections 2846.2 and 2846.3 of this section, the per diem tuition rate to be paid by the District of Columbia to a nonpublic special education school or program shall be the lowest of the:

- (a) Maximum Per Diem Tuition Rate as calculated consistent with this chapter;
- (b) Per diem tuition rate the nonpublic school or program charges to the private-paying general public, derived by dividing the total annual tuition by the actual number of school days if necessary; or
- (c) Per diem tuition rate set by another state, or political subdivision within a state, applicable to the school location(s) listed in the approval document, as the result of a rate-setting methodology that has been deemed to be reasonable by OSSE.

2846.2 OSSE shall accept the per diem tuition rate set by the state or political subdivision within the state in which the school or program is located when the per diem tuition rate is derived from a standardized rate-setting methodology deemed reasonable by OSSE. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE’s acceptance of the rates will be applied to each individual school location approved and listed within the provided state approval document(s). School locations not listed and approved within the provided documents will not receive the state approved rates.

2846.3 OSSE may accept a rate set by a state or political subdivision within a state other than the state in which the school or program is located when the per diem tuition rate is derived from a standardized rate-setting methodology deemed reasonable by OSSE. If the rate set by the state or political subdivision applies to more than one (1) school location, OSSE's acceptance of the rates will be applied to each individual school location approved and listed within the provided state approval document(s), only. School locations not listed and approved within the provided document(s) will not receive the state approved rates.

2846.4 If the state approved rate(s) is higher than the Maximum Per Diem Rate as calculated in this chapter and the state approved rate is based upon a bundling of tuition and related services, as permitted by that state, the nonpublic school or program shall be responsible for communicating such to OSSE, and OSSE shall confirm rates in accordance with the states documentation of services to be included in each approved rate(s).

## **2847 EXTENDED SCHOOL YEAR RATES**

2847.1 Rates for extended school year (ESY) services, as defined by 34 C.F.R. § 300.106, shall be prorated hourly, calculated according to this chapter, and based on a prorated instructional day.

2847.2 Each nonpublic school or program shall submit an ESY schedule documenting the amount of daily instruction provided in order for OSSE to approve the ESY rate. Such documentation shall be received, annually, no less than sixty (60) sixty days before the first date of expected ESY invoicing.

2847.3 No invoice for ESY services for a student shall be submitted to OSSE prior to the date OSSE has approved an ESY rate.

2847.4 No invoice for ESY services for a student shall be submitted to OSSE unless eligibility and certification for ESY has been documented in the student's IEP and in accordance with OSSE ESY policy.

2847.5 The first billing date for a student's ESY services shall be the first (1<sup>st</sup>) day of attendance, in accordance with the student's IEP, at the designated ESY location.

## **2848 RATE SETTING – RELATED SERVICES**

2848.1 The Baseline Hourly Rate used to calculate the Maximum Hourly Rate for each of the following related services, as defined by 34 C.F.R. § 300.34(2010), including the Maximum Cost for evaluation and screening services, shall be the mean hourly rate from the United States Department of Labor Bureau of Labor Statistics ("BLS") Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV



Metropolitan Division that corresponds to each of the following Standard Occupational Classification (“SOC”) system codes:

- (a) Audiology services, as referred to in 34 C.F.R. § 300.34(c)(1)(2010) – SOC code 29-1181(Audiologist);
- (b) Counseling services, as referred to in 34 C.F.R. § 300.34(c)(2)(2010) and, for Psychological services provided by a Psychologist only, 34 C.F.R. § 300.34(c)(10):
  - (1) Behavioral supports provided by a Licensed Mental Health Counselor – SOC code 21- 1014 (Mental Health Counselors);
  - (2) Behavioral supports provided by a Licensed Social Worker – SOC code 21-1021 (Child, Family, and School Social Workers);
  - (3) Behavioral supports provided by a Psychologist – SOC code 19-3031 (Clinical, Counseling, and School Psychologist); or
  - (4) Behavioral supports provided by a Psychiatrist – SOC code 29-1066 (Psychiatrists);
- (c) Occupational Therapy services, as referred to in 34 C.F.R. § 300.34(c)(6)(2010) – SOC code 29-1122 (Occupational Therapists);
- (d) Physical Therapy services, as referred to in 34 C.F.R. § 300.34(c)(9)(2010) – SOC code 29-1123 (Physical Therapists);
- (e) Speech-Language Pathology services, as referred to in 34 C.F.R. § 300.34(c)(15)(2010) – SOC code 29-1127 (Speech-Language Pathologists);
- (f) Nutrition Services, as referred to in 42 C.F.R. § 440.60 (a) - SOC code 29-1031;
- (g) Orientation and Mobility, as referred to in 42 C.F.R. § 440.130(d);
- (h) Personal Care, as referred to in 42 C.F.R. § 440.167 - 39-9021; and
- (i) Skilled Nursing, as referred to in 42 C.F.R. § 440.60 - SOC code 29-9799

2848.2 Specialized transportation rates will be reimbursed in accordance with rates established by the Department of Health Care Finance (“DHCF”).

Except as provided in (a) and (b) below, the Maximum Hourly Rate for individual related services shall be two and one half (2.5) times the Baseline Hourly

Rate. Nonpublic special education schools and programs may not charge OSSE more than the rate charged to any private payer for the same related service. Providers may be required to provide copies of credentials to support any given rate.

- (a) For Counseling Services provided by a Psychologist the Maximum Hourly Rate shall be two and three-quarters (2.75) times the Baseline Hourly Rate.
- (b) For Occupational Therapy Services the Maximum Hourly Rate shall be two and three-quarters (2.75) times the Baseline Hourly Rate.

2848.3 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for related service rates that are not provided for in this section. OSSE shall not pay for such a related service unless the rate is specifically approved by OSSE as part of the most recent OSSE rate confirmation process or through a separate, OSSE, rate review process.

- (a) Unless otherwise set by the District's Medicaid Program for PRTFs or an OSSE confirmed state rate approval, the maximum rate a related service provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the United States Department of Labor Bureau of Labor Statistics ("BLS") Metropolitan Area Occupational Employment and Wage Estimates for the geographic area in which the day or residential program is located.

2848.4 If the rate of another state or political subdivision has been accepted by OSSE under this chapter is a bundled tuition rate that incorporates related service(s), the nonpublic school or program may not invoice OSSE separately for that service up to the number of bundled hours. OSSE shall apply a debit to the account of or seek a refund from a nonpublic school or program found to have charged OSSE in violation of this section.

2848.5 *Group Rates for Related Services.* The per-student hourly rate for each student in a group shall be based on the following formula:

- (a) Group Size of 2 = (Individual Related Service Rate x 1.85) ÷ 2;
- (b) Group Size of 3 = (Individual Related Service Rate x 1.95) ÷ 3;
- (c) Group Size of 4 = (Individual Related Service Rate x 2.00) ÷ 4; or
- (d) Group Size of 5 or more = (Individual Related Service Rate x 2.00) ÷ 5.

2848.6 *Aides.* For IEP-required One-to-One (1 to 1) aides, the baseline annual salary used to calculate the maximum hourly rate will be the mean annual salary from

the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division that corresponds to occupational code 25-9041 (Teacher Assistants). The Maximum Hourly Rate for Aides shall be the mean annual salary divided by one hundred eighty (180) school days divided by six (6) instructional hours.

## **2849 RATE SETTING – EVALUATIONS AND SCREENINGS**

2849.1 The Maximum Evaluation and Screening Cost to be paid for each of the following service categories will be calculated by multiplying the corresponding individual related service rate as described in Section A-2848 by the maximum number of hours permitted to be billed for each evaluation or screening, as provided in the following chart:

<b>Evaluation or Screening</b>	<b>Relevant DHCF Procedure Code Description(s)</b>	<b>Maximum Number of Hours</b>	<b>Corresponding Related Service Rate</b>
(a) Audiology	Evaluation of speech, language, voice, communication, and/or aural rehabilitation status	4	Audiology, A-2848.1(a)
(b) Comprehensive Psychological	Psychological testing (includes psychodiagnostic assessment of emotionality, intellectual abilities, personality and psychopathology, for example, Minnesota Multiphasic Personality Inventory, Rorschach, Wechsler Adult Intelligence Scale (WAIS), per hour of the psychologist's or physician's time, both face-to-face time administering tests to the patient and time interpreting these test results and preparing the report	13	Counseling by a Psychologist, A-2848.1(b)(3)
(c) Neuropsychological Testing Battery	Neuropsychological testing battery (for example, Halstead-Reitan, Luria, WAIS-R with interpretation and report	10	Counseling by a Psychologist, A-2848.1(b)(3)
(d) Neurobehavioral Status Exam	Clinical assessment of thinking, reasoning and judgment ( <i>e.g.</i> acquired knowledge, attention, language, memory, planning and problem solving, and visual-spatial abilities)	10 (note: Neuropsychological evaluations are comprised	Counseling by a Psychologist, A-2848.1(b)(3)

		of (c) and (d))	
(e) Occupational Therapy	Occupational therapy evaluation or screening, including re-evaluations	6	Occupational Therapy, A-2848.1(c)
(f) Psychiatric	Psychiatric diagnostic interview examination	10	Counseling by a Psychiatrist, A-2848.1(b)(4)
(g) Physical Therapy	Physical therapy evaluation or re-evaluation	4	Physical Therapy, A-2848.1(d)
(h) Speech-Language	Evaluation or screening of speech, language, voice, communication, auditory processing, and/or aural rehabilitation status	8	Speech-Language Pathology, A-2848.1(e)
(i) Nutrition Services	Services and Screenings relative to a medical condition	6	Nutrition Services, A-2848.1(f)
(j) Orientation and Mobility	Services and Screening for blind or visually impaired children	1	Orientation and mobility A-2848.1(g)
(k) Personal Care	Services and Screenings provided by Personal Care Aide	6	Personal Care A-2848.1(h)
(l) Skilled Nursing	Services and Screenings for administration of physician ordered medications or treatments	4	Skilled Nursing A-2848.1(i)

2849.2 A nonpublic special education school, program, evaluator, or related service provider shall obtain from OSSE prior written approval for an evaluation or screening rate that is not provided for in this section. OSSE shall not pay for such a related service unless the rate is specifically approved by OSSE as part of the most recent OSSE rate confirmation process or through a separate, OSSE approved, rate review process.

- (a) Unless otherwise set by the District's Medicaid Program for PRTFs or an OSSE confirmed state rate approval, the Maximum Evaluation Cost for an evaluation provided to a student enrolled in a nonpublic special education day or residential school or program shall be aligned to the United States Department of Labor Bureau of Labor Statistics (BLS) Metropolitan Area Occupational Employment and Wage Estimates for the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division and multiplied by the permitted number of hours.

## 2850 RATE-SETTING – ADMINISTRATION AND APPEALS

- 2850.1 OSSE shall be responsible for processing payments for services provided to students attending nonpublic special education schools or programs paid for by the District of Columbia and shall:
- (a) Issue written guidance with regard to OSSE's payment policies and procedures;
  - (b) Issue written guidance for dispute resolution with regard to payments made under the Placement Act and this chapter;
  - (c) Publish rates and payment related guidance on the OSSE website; and
  - (d) Publish the components of the annual rate calculation formula on the OSSE website.
- 2850.2 A nonpublic special education school or program may appeal a rate established by OSSE under the Placement Act in accordance with the rate reconsideration review process before a rate reconsideration panel established by the Placement Act.
- 2850.3 The rate established by OSSE shall remain in effect pending a final decision of the rate reconsideration panel.
- 2850.4 A rate shall be eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency. In order to be heard and considered, a nonpublic special education school or program's written request for reconsideration of a rate established under this chapter shall:
- (a) Be filed with OSSE within thirty (30) calendar days after the school or program receives notification of the rate established by OSSE under this chapter;
  - (b) State with specificity the relief requested;
  - (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
  - (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.
- 2850.5 The rate reconsideration panel may in its discretion review individual exceptions for a student the panel determines has unique or highly specialized needs that cannot be properly addressed and funded through the aggregate rate. In the case

where reconsideration is being requested for an individual exception to an aggregate rate, the requesting party shall:

- (a) Justify with specificity the necessity to pay for services at a rate in excess of an established rate;
- (b) Demonstrate the existence of the student's unique or highly specialized needs;
- (c) Include documented data and analysis to justify the request for a specific rate and an explanation why the special education services required by the District student's IEP could not be met at the established rate; and
- (d) Provide any other information deemed appropriate by the rate reconsideration panel to allow an analysis of the claim.

2850.6 Upon receipt of a timely request for reconsideration that conforms with the requirements of the Placement Act and this chapter, OSSE shall convene and provide administrative support to the rate reconsideration panel in conformance with the Placement Act. OSSE shall establish guidance with regard to the panel hearing process and member conduct, including:

- (a) Confidentiality requirements;
- (b) Member duties, responsibilities, and prohibitions against representations or public statements related to panel membership;
- (c) The rate reconsideration hearing procedures, including a requirement to issue a panel decision within forty-five (45) days after the date of the receipt of a request for reconsideration; and
- (d) Specifications regarding the official record.

2850.7 The rate reconsideration panel may require a nonpublic special education school or program requesting reconsideration of a rate to provide the panel with further documentary evidence required to make a decision and may establish deadlines for the submission of such evidence.

## 2899 DEFINITIONS

Any term used in this chapter that is not otherwise defined herein, has the same meaning as in D.C. Official Code §§ 38-2561 *et seq.* (2012 Repl.) and the IDEA 20 U.S.C. §§ 1400 *et seq.*

**“Americans with Disabilities Act”** means the Americans with Disabilities Act of 1990, approved July 26, 1990 (Pub.L. 101-336, 104 Stat 327, as amended; 42 U.S.C. §§ 12101 *et seq.*).

**“Abuse”** shall have the meaning provided that term in D.C. Official Code § 16-2301 (2012 Repl.).

**“Aversive intervention”** shall have the meaning provided that term in D.C. Official Code § 38-2561.01(1) (2012 Repl.).

**“Behavior Intervention Plan or BIP”** means a written plan that describes how an educational setting will be changed to improve the behavioral success of a student; the teaching that will occur to give the student alternative ways of behaving; the consequences that will be provided to (a) encourage positive behavior, (b) limit inadvertent reward of problem behavior, and (c) where appropriate, discourage problem behavior; and procedures for ongoing assessment to determine if the BIP is being implemented correctly and if implementation is resulting in benefits for the student.

**“Bundled or Package Rate Methodology”** means use of a single invoice for groups of services to students with disabilities without documentation of the actual delivery of services or their costs on an individual per student basis, and which therefore does not qualify for Medicaid reimbursement under federal guidance.

**“Days”** means calendar days unless otherwise noted.

**“Emergency”** means a temporary and non-recurring circumstance in which intervention is reasonably believed to be necessary to protect a student or other person from imminent, serious physical harm. Property destruction, disruption of school order, or failure of a student to follow the directive of a school official shall not alone constitute imminent, serious physical harm.

**“Evaluation”** means an assessment conducted by a professional certified to conduct such an assessment for students suspected of or diagnosed with a disability defined herein.

**“Extended school year services or ESY services”** means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with a student’s IEP, provided at no cost to the parents of the student, and meet the standards of the SEA.

**“Family Educational Rights and Privacy Act” or “FERPA”** means the Family Educational Rights and Privacy Act of 1974, Elementary and Secondary Education Amendments Act, approved August 21, 1974 (Pub.L. 93-380; 88 Stat 571, as amended; 20 U.S.C. § 1232g); and implementing rules at 34 C.F.R. Part 99.

**“FAPE”** means a free and appropriate public education as described in 20 U.S.C. § 1401.

**“FBA”** means a functional behavioral assessment.

**“Full approval status”** means the recognition by OSSE that a nonpublic special education school or program has demonstrated an ability to comply with the standards of this chapter, and has successfully completed an application for a certificate of approval.

**“Functional behavior assessment”** or **“FBA”** means a process for identifying (a) observable problem behaviors, (b) the contexts or routines where the problem behaviors are most likely, (c) the specific antecedent events within a context or routine that reliably predict occurrence of problem behaviors, and (d) the consequences that appear to maintain the problem behavior.

**“Individuals with Disabilities Education Act”** or **“IDEA”** means the Individuals with Disabilities Education Act, approved November 29, 1975 (Pub.L. 94-142, 89 Stat. 773, as amended; codified at 20 U.S.C. §§ 1400 *et seq.*).

**“Individualized Education Program”** or **“IEP”** means a written plan that specifies the special education and related services to be provided to meet the unique educational needs of a student with a disability, in conformance with the IDEA, as described in 20 U.S.C. § 1414(d).

**“Local Educational Agency”** or **“LEA”** means a public agency having administrative control and direction of a public elementary or secondary school in the District of Columbia. The term includes public charter schools; provided, however, that if a public charter school has ceded its responsibility for providing special education services to the District of Columbia Public Schools (“DCPS”) pursuant to D.C. Official Code § 38-1802.10(c) (2012 Repl.), then DCPS shall be considered the LEA for such public charter school for purposes of this chapter.

**“LEA of enrollment”** means the local educational agency (LEA) at which the student remains enrolled while attending a nonpublic special education school or program, that remains responsible for ensuring the provision of FAPE to the student and compliance with the IDEA.

**“Location assignment”** means the actual school site or facility at which the student will receive his or her instruction.

**“Mechanical restraint”** means the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of



his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

**“Neglect”** shall have the meaning provided that term by D.C. Official Code § 16-2301 (2012 Repl.).

**“Nonpublic special education school or program”** means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting. If a nonpublic special education school or program has multiple locations, each location will be considered and treated by OSSE as an individual program in regards to location of service and rate confirmation.

**“OSSE”** means the Office of the State Superintendent of Education for the District of Columbia.

**“Parent”** shall have the meaning provided that term in the IDEA, 20 U.S.C. § 1401(23); 34 § C.F.R. 300.30 and 5-E DCMR § 3001.

**“Personnel”** means any individual on site at a nonpublic special education school or program or a person who works with a student on a full-time, part-time, temporary or contractual basis who is paid for services or volunteers service without monetary or other compensatory benefit.

**“Physical restraint”** means the use of bodily force to limit a student’s freedom of movement.

**“Placement”** means the level of service and the type of enrollment, classified by the level of restrictiveness (*e.g.*, general education classroom, separate classroom, resource classroom, or nonpublic school.)

**“Placement Act”** means the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 *et seq.*) (2012 Repl.).

**“Prone restraint”** means the use of force and/or use of a physical device to hold a student face down or stomach down on the floor.

**“Provider”** means a facility or person providing a special education or related service to a student with a disability.

**“Psychiatric residential treatment facility” or “PRTF”** means a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards recognized by the state in which the facility is located and provides inpatient psychiatric services for individuals under the age of twenty-two (22) in conformance with the federal requirements set forth in Sections 441.151 through 441.182 of Title 42 of the Code of Federal Regulations.

**“Rate”** means a fee for a special education service, including the per-diem or hourly cost paid to each nonpublic special education day or residential school (including PRTFs) or program, for tuition, and related services delivered in conformance with an IEP, unless otherwise specified in this chapter.

**“Receipt Date”** means the date of actual receipt for hand delivered documents and documents sent electronically to a designated contact; or three days after the postmark date of transmittal.

**“Rehabilitation Act”** means the Rehabilitation Act of 1973, approved September 26, 1973 (Pub.L. 93-112, 87 Stat. 355; 29 U.S.C. 701 *et seq.*).

**“Related Service”** shall have the meaning provided that term in the IDEA, 20 U.S.C. § 1401(26); and 34 C.F.R § 300.34.

**“Seclusion”** means the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, or from which as student believes he or she may not leave, whether or not in a locked area.

**“Special education”** means specially designed instruction for students with disabilities, as provided in the IDEA, 20 U.S.C. § 1401(29).

**“Student”** means a student with a disability for whom the District of Columbia is paying tuition, fees, or other costs to attend a nonpublic special education school or program.

**“Student with a disability”** means a student determined to have one of the conditions, disabilities or impairments listed in the D.C. Official Code § 38-2561.01(14) or any other condition, disability, or impairment described in Section 602(3) of the IDEA, 20 U.S.C. § 1401; or in Section 7(8) of the Rehabilitation Act, 29 U.S.C. § 796(8)).

**“Uniform Per Student Funding Formula”** means the manner of calculating tuition rates for students, using weighting as a multiplication factor applied to a foundation cost for student counts in certain grade levels or special needs programs to account for differences in the cost of educating students with adequate regular education services as described in the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999, as amended (D.C. Law 12-207; D.C. Official Code § 38-2901 *et seq.* (2012 Repl.)).

**“Truancy”** means the absence of a school-age student from any portion of the school day without a valid excuse consistent with the requirements of the attendance and truancy requirements set forth in Chapter 21 of Subtitle A of Title 5 of the DCMR.

Persons desiring to comment on this proposed rulemaking may attend the public hearings scheduled to be held at Room 300, OSSE, 810 1 St. NE, Washington, D.C. 20002, on April 29, 2014, 1:30 p.m. until 3:30 p.m., and May 6, 2014, 5:30 p.m. until 7:30 p.m.; individuals wishing to testify at the hearing should contact Christie Weaver, Policy Analyst, at 202-481-3870 or by e-mail at [Christie.weaver@dc.gov](mailto:Christie.weaver@dc.gov). Individuals representing themselves and presenting testimony will be limited to five (5) minutes; individuals representing an organization will be limited to a total presentation time of seven (7) minutes at each public hearing. Persons may also file comments in writing by mail or hand delivery to “Dr. Amy Maisterra, Assistant Superintendent of Specialized Education, c/o Grace Chien, Director of Policy, OSSE, Division of Specialized Education, 810 1<sup>st</sup> St. NE – 5<sup>th</sup> Floor, Washington, D.C. 20002” not later than sixty (60) days after the date of publication of this notice in the *D.C. Register*. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at [www.osse.dc.gov](http://www.osse.dc.gov).